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12 **UNITED STATES BANKRUPTCY COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 In re: Case No. 16-22134-D-7

15 DC No.: UST-1

16 **STANLEY MAYFIELD,**

17 Date: June 15, 2016

18 Time: 10:00 a.m.

Dept.: D

Courtroom: 34

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20 **UNITED STATES TRUSTEE'S REPLY IN SUPPORT**
OF HER MOTION FOR IMPOSITION OF SANCTIONS

21 The United States Trustee for the Eastern District of California (the "UST") hereby
22 submits this reply in support of her motion (docket no. 10) (the "Motion") for an order imposing
23 sanctions against Pauldeep Bains, Esq. ("Counsel"), for violating Local Bankruptcy Rule 9004-
24 1(c), and in response to Counsel's opposition to the Motion (docket no. 19) (the "Opposition").
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26 For her reply, the UST respectfully states as follows:

1. The “signatures” for the Debtor on his Petition, Schedules and Statements (docket
 2 no. 1) (the “**Bankruptcy Documents**”) were not made by the Debtor or placed there by the
 3 Debtor’s own hand.¹

4. Rather, the signatures were created and affixed to the Bankruptcy Documents by the
 5 **DocuSign** service. See Exhibit 7 to the Motion (docket no. 15), at pp. 380-83 (¶¶ 9, 11-16);
 6 Memorandum of Points and Authorities in support of the Opposition (docket no. 20) (the
 7 “**Opposition MPA**”), at p.3 n.1.

8. Nevertheless, Counsel contends that the Bankruptcy Documents – with the
 9 DocuSign-generated signatures – constitute “originally signed document[s]” under Local
 10 Bankruptcy Rule 9014-(1)(c)(1)(B)(i). See Opposition, at p.1 (lines 24 to 27); Opposition MPA,
 11 at p.2 (lines 11-15); Counsel’s Declaration (docket no. 21), at ¶ 15.

12. For the reasons below, the UST disagrees.

13. **A “Signature” Requirement Commonly Means a *Handwritten* Name or Mark.**

14. In Becker v. Montgomery, 532 U.S. 757 (2001), the Supreme Court addressed the
 15 signature requirement of Fed. R. Civ. P. 11(a). The Becker Court held that a pro se prisoner’s
 16 typed name did not satisfy the signature requirement. Id. at 763-64. In so holding, the Becker
 17 Court recognized that the common meaning of a signature requirement is a person’s handwritten
 18 name or mark. See id. at 764 (“As Rule 11(a) is now framed, we read the requirement of a
 19 signature to indicate, as a signature requirement commonly does, and as it did in John Hancock’s
 20 day, a name handwritten (or mark handplaced).”) (emphasis added).²

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¹ The Bankruptcy Documents were filed as Exhibit 1 to the Motion. See docket no. 15.

² While the Becker Court acknowledged that the signature requirement “can be adjusted to keep
 29 pace with technological advances,” it was “not disposed to extend the meaning of the word ‘signed’” without a “rule
 change so ordering.” 532 U.S. at 763-64.

1 6. Counsel's Opposition does not address Becker. Counsel instead points to two
 2 "commonly used" definitions of the word "signature." The definitions, however, acknowledge
 3 that, to qualify as a signature, the Debtor's name or mark must be "marked by himself" or must
 4 be "made by an individual on an instrument or document." See Opposition MPA, at p.3 (lines
 5 13-18).³

6 7. The problem is this: the Debtor did not "make" the signatures on his Bankruptcy
 7 Documents. DocuSign's software did. Thus, neither "commonly used" definition advances
 8 Counsel's position. In fact, the definitions are consistent with the Becker Court's recognition
 9 that a signature requirement commonly means a handwritten name or mark.⁴

10 11 **B. The Context of the "Originally Signed Document" Requirement Confirms that a
 12 Handwritten Signature is Necessary.**

13 14 8. Any ambiguity about the meaning of an "originally signed document" is easily
 15 resolved by the phrase's context. Cf. Direct Mktg. Ass'n v. Brohl, 135 S. Ct. 1124, 1132 (2015)
 16 ("To resolve this ambiguity, we look to the context in which the word is used.").

17 18 9. Under subpart (B) of Local Rule 9004-1(c)(1), if a "software-generated electronic
 19 signature" is used in place of an "originally signed document" or a "scanned copy of the
 20 signature page(s)," then subparts (C) and (D) of Local Rule 9014-1(c)(1) apply. See Local Rule
 21 9004-1(c)(1)(B)(iii).

22 3 The definition from *collinsdictionary.com* admittedly includes marks made "by an
 23 authorized deputy." See Opposition MPA, at p.3 (lines 14-16). If adopted by the Court, that phrase
 24 would seemingly permit debtors to authorize their attorneys, spouses, or any other third-party to sign
 25 documents on their behalf. The UST does not understand Counsel to be advocating what would be a
 26 sweeping departure from current practice. See *Feezor v. Stockton*, 2013 WL 5486831, at *3-4 (E.D. Cal.
 Sept. 30, 2013) (disregarding plaintiff's declaration, where plaintiff's signature was affixed to the
 document by his counsel).

27 4 Counsel's reliance on 1 U.S.C. § 1 also fails to advance his position. Even assuming its
 28 applicability, that provision also suggests that a person's signature must be made by that person. See 1
 U.S.C. § 1 ("unless the context indicates otherwise ... 'signature' ... includes a mark when the person
making the same intended it as such.") (emphasis added).

10. Subpart (C) of Local Rule 9004-1(c)(1), in turn, provides that:

2 [t]he use of “/s/ Name” or a software-generated electronic signature on documents
 3 constitutes the registered user’s representation that an originally signed copy of
 4 the document exists and is in the registered user’s possession at the time of filing.

5 See Local Rule 9004-1(c)(1)(C) (emphasis added).

6 11. As the foregoing demonstrates, the Local Rules make a clear distinction between
 7 an “originally signed document” and a document with a “software-generated electronic
 8 signature.” When a “software-generated electronic signature” is used, the e-filer must represent
 9 that he or she possesses an originally signed copy of the document at the time of filing. There is
 10 no such requirement when an e-filer files an “originally signed document.”

11 12. Here, the DocuSign-created signatures on the Bankruptcy Documents are nothing
 12 more than “software-generated electronic signature[s].” As such, they cannot be “originally
 13 signed documents.”⁵

14 15 **C. A Narrow Interpretation of the Meaning of an “Originally Signed Document”**
 16 **Protects Debtors and the Integrity of the Bankruptcy System.**

17 13. A debtor’s signature is not a trivial matter. The signature on the Petition is the
 18 debtor’s consent to the bankruptcy filing. See *In re Phillips*, 306 B.R. 655, 659 (Bankr. E.D. Mo.
 19 2004). The signature is also the debtor’s declaration under penalty of perjury that the
 20 information in the Petition, Schedules and Statements is true and correct. See Fed. R. Bank. P.
 21 1008.

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 26 ⁵ Further support for the UST’s position is found in Local Rule 9014-1(d), which equates
 27 an “image of an original manual signature” to an original signature. See Local Rule 9014-1(d) (emphasis
 28 added). Counsel incorrectly contends that “under no definition of the term ‘manual’ is the UST’s
 assertion supported.” See Opposition MPA, at pp. 6:28-7:1. Notably, the definition of “manual” from
dictionary.com (as cited by Counsel) indicates that “manual” means “done ... by hand or hands rather
than by an electrical or electronic device.” See Opposition MPA, at p.6 (lines 13-14) (emphasis added).

1 14. False declarations can result in the denial of a debtor's discharge. See 11 U.S.C.
 2 § 727(a)(4)(A). False declarations can even result in criminal prosecution. See 18 U.S.C. §
 3 152(a)(3).

4 15. The requirement that e-filing attorneys possess handwritten signatures helps ensure
 5 the authenticity of documents filed with the Court. Cf. Becker, 532 U.S. at 764 ("The local rules
 6 on electronic filing provide some assurance, as does a handwritten signature, that the submission
 7 is authentic."). Thus, a narrow interpretation of the meaning of an "originally signed document"
 8 protects both debtors and the integrity of the bankruptcy system.

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 10 16. In this case, the UST does not doubt that Counsel reviewed the Bankruptcy
 11 Documents with the Debtor and that the Debtor approved the documents before they were filed.
 12 The fact remains, however, that Counsel is advancing an interpretation of the Local Rules that
 13 would treat software-generated electronic signatures as original signatures. This interpretation
 14 would almost certainly increase the possibility of confusion and mischief in the signature process
 15 (especially when less scrupulous e-filers are involved).⁶
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27 6 For instance, debtors faced with a denial of discharge action may deny signing documents
 28 and instead claim that a spouse, child or roommate had access to the debtor's computer or email account,
 29 or that the email with the DocuSign link was sent or forwarded to someone other than the debtor. The
 30 availability of the original signature may be vitally important to overcome such a defense.

1 **WHEREFORE**, the UST respectfully requests that the Court grant the Motion and
2 impose sanctions against Counsel.

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4 Executed in Sacramento, California on June 7, 2016.

5 Respectfully submitted,

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7 **TRACY HOPE DAVIS**
8 **UNITED STATES TRUSTEE**

9 By:/s/ Jason Blumberg _____
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